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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1292

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, *Petitioner*,

vs.

REEVE ALEUTIAN AIRWAYS, INC., *Respondent*.

BRIEF IN OPPOSITION

QUESTION PRESENTED

Whether, in a situation where a major dispute as to certain proposed changes in the terms of a collective bargaining agreement has run its course pursuant to the Railway Labor Act and a strike has taken place, and the agreement by its terms has ended, a carrier may unilaterally impose changes other than the ones proposed.

STATEMENT OF THE CASE

On October 28, 1966, International Association of Machinists and Aerospace Workers (the Union) and Reeve Aleutian Airways, Inc. (the Company), entered into a collective bargaining agreement covering pay rates, rules, working conditions, and various other aspects of employment (R. 6). The duration of the contract was described (R. 6, Art. XXI, p. 50) as follows:

> "This Agreement shall become effective November 1, 1966, and shall continue in full force and effect until April 1, 1968, and shall renew itself without change until each succeeding April 1st thereafter, unless written notice of intended change is served in accordance with Section 6, Title 1, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to April 1st in any year after 1967."

On January 30, 1968, the Union notified the Company by letter of proposed changes in the contract (R. 7):

> "In accordance with Section 6, Title 1, of the Railway Labor Act, as amended, and the current labor agreement between the parties, you are hereby notified that we are opening the attached provisions of the agreement for amendment and modification."

The Company and the Union negotiated unsuccessfully from March 24 to March 28, 1968 (R. 44). On April 3, 1968, the Company requested the services of the National Mediation Board, whose mediator super-

vised bargaining sessions on May 23, 1968, and May 24, 1968 (R. 44). Further mediation sessions were conducted during August of 1968 (R. 45). All were unsuccessful. On September 11, 1968, the National Mediation Board requested the parties to submit to arbitration, but the Union declined (R. 45). On September 18, 1968, the Board notified the parties of the termination of its services and informed the parties of the 30-day "cooling off" period during which the status quo was to be maintained (R. 45).

On October 19, 1968, the Union instructed or caused its members to withdraw all services from the Company, and continued to do so even after this suit was filed (R. 45-46), although the strike was technically discontinued on September 24, 1969 (R. 27).

On September 24, 1969, the Union sent the Company a letter stating that the collective bargaining agreement of October 28, 1966, was still in effect, and demanded that the Company comply with the union security and dues deduction provisions (R. 11). The Company refused, asserting that the contract had been terminated (R. 27-28). The Union then initiated this action in the United States District Court seeking a declaration that those terms of the expired contract which the Union had not sought to change continued to bind the Company.

The District Court granted the Company's motion for Summary Judgment on the ground that the Railway Labor Act did not operate to extend the term of the contract; the Court of Appeals affirmed, and the Union petitioned this Court for certiorari.

REASONS FOR NOT GRANTING THE WRIT

1. THERE IS NO CONFLICT WITH THE STATUTORY DESIGN OF THE RAILWAY LABOR ACT

The decision of the Court of Appeals was clearly consistent with the terms of the contract between the Company and the Union, and the Railway Labor Act does not require a contrary result.

The collective bargaining agreement which is the subject of this litigation provided that its duration should run until April 1, 1968, and that it should thereafter renew itself each succeeding April 1 unless proper written notice of intended change were served by either party within the prescribed time. The Union served appropriate notice of intended change upon the Company on January 30, 1968, within the time set forth in the contract. Consequently, the contract terminated on April 1, 1968.

The Railway Labor Act was never intended to provide anything other than a federally sanctioned forum, in which labor and management were required to bargain with each other before resorting to economic warfare. The purpose of the Act was quite simply to keep the railroads running during negotiations, so as to avoid an unnecessary public outcry for no-strike legislation and compulsory arbitration. See *Hearings on H. R. 7180 before the House Committee on Interstate and Foreign Commerce,* 69th Congress, 1st Sess., 53-55, 90-93 (1926); 67 Cong. Rec. 4702-4705 (1926). Although compulsory arbitration and antistrike provisions were discussed, both labor and management generally felt these measures too extreme and im-

practical, even in view of the public interest in keeping transportation routes open. 67 Cong. Rec. 4702-4705, 9203-9206 (1926); *Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 22 L.Ed.2d 344 (1969). Nowhere in the proceedings before the House and Senate Committees, nor on the floor of either the House or the Senate, is there any intimation that anyone thought the "status quo" provisions would continue to bind the parties after a strike. On the contrary, it shows that witnesses and lawmakers alike considered the proposed bill to place on labor and management the duty to negotiate cooly in the hope of avoiding a strike. What should happen after the strike was over was never discussed, as far as counsel can determine. 67 Cong. Rec. (1926); *Hearings on H. R. 7180 before the House Committee on Interstate and Foreign Commerce,* 69th Cong., 1st Sess. (1926); *Hearings on S. 2306 before the Senate Committee on Interstate Commerce,* 69th Cong., 1st Sess. (1926).

It is well settled that once the Act's conciliatory machinery has run its course, the parties may resort to self-help; that is, the Union may strike, and the Company may (indeed, *must*) continue to operate. *Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 22 L.Ed.2d 344 (1969); *Brotherhood of Locomotive Engineers v. Baltimore and O. R. R. Co.,* 372 U.S. 284, 9 L.Ed.2d 759 (1963); *Elgin, Joliet and Eastern Ry. Co. v. Burley,* 325 U.S. 711, 89 L.Ed. 1886 (1945). The possibility that economic warfare might occur in spite of the Act was

foreseen by its proponents, who nevertheless offered the legislation as a *deterrent* to such measures. See the testimony of Donald R. Richberg, Counsel for the Organized Railway Employees, *Hearings on H. R. 7180 before the House Committee on Interstate and Foreign Commerce,* 69th Congress, 1st Sess., at p. 55 (1926), and of A. P. Thom, General Counsel for the Association of Railway Executives, *id.,* at p. 117.

It is therefore evident that once a strike (or other self-help measure by either side) takes place, the very evil which the Act was designed to discourage has occurred, and its usefulness and applicability have come to an end. The interpretation urged by the Union, which would require that the parties resume a "status quo" long since abandoned by both sides, has no reasonable relationship to the purpose of the Act as set forth in its legislative history.

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2. THERE IS NO CONFLICT WITH PRIOR DECISIONS OF THIS COURT

The Union claims that *Brotherhood of Ry. and S. S. Clerks v. Florida East Coast Ry. Co.,* 384 U.S. 238 (1966) requires that the status quo be maintained after the termination of the contract, after the procedures of the Act have been exhausted and after the Union has called (and finally ended) a strike. The only stated authority for this interesting interpretation is footnote 7 of the opinion.

It is clear, however, that the contract in *Florida East Coast* expressly provided that it should continue

in force until a new agreement was reached. See the Court of Appeals' decision below, 469 F.2d at 993. Therefore, as the Court of Appeals held, the fact situations are dissimilar, and the contract in the instant case was terminated.

All the Union's assertions of law are anchored to a most tenuous proposition: that the parties cannot contract for a fixed term, but instead, having once signed a contract, they are "locked in" indefinitely to provisions as to which neither party requested change. Precedent for such a requirement cannot be found in any of this Court's opinions. The Union says in essence that the parties can never make an agreement for a time certain, regardless of the intent and objectives at the time of negotiation. Such an interpretation would seriously hamper the freedom of parties to contract with each other in a manner deemed mutually appropriate. As set forth above, there is no valid public policy reason which compels a result unintended and undesired by the parties.

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3. THE DECISION IS CONSISTENT WITH OPINIONS IN OTHER COURTS OF APPEALS

As noted in its opinion, the decision of the Court of Appeals is consistent with the Second Circuit's ruling in *Flight Engineers' International Ass'n, EAL Chapter, AFL-CIO v. Eastern Airlines, Inc.*, 359 F.2d 303 (2d Cir. 1966), which reads in relevant part as follows:

> "The collective bargaining agreement between Eastern and FEIA was signed on December 31,

1958. By its terms, it was to continue in force until April 1, 1960, renewable thereafter on a yearly basis until notice of a desire to change the agreement was served by either party on the other prior to April 1st of any year. Such a notice was sent by FEIA on February 8, 1960. Negotiations between the parties continued intermittently until February 1962, and were followed by the appointment of a presidential emergency board under Section 10 of the Act. The Board filed its report to the President on May 1, 1962, and the freezing of the situation which had been caused by the appointment of the emergency board ended thirty days later. After June 1, 1962, the contract was no longer in effect and the union was free to strike (Citations omitted). Unlike the collective bargaining agreement considered in Manning v. American Airlines, Inc., 329 F.2d 32 (2nd Cir.), cert. denied, 379 U.S. 817, 85 S.Ct. 33, 13 L.Ed. 2d 29 (1964), the status quo provisions of the Railway Labor Act had ceased to operate. Nor does FEIA suggest the existence of any conduct on the part of both parties which could serve as the basis for an argument that the parties had agreed to keep the former contract in effect although it was extinct by its own terms. The time for economic warfare had arrived, and the battle was not slow in coming."

It is well settled that a collective bargaining agreement, even under the Railway Labor Act, does not create a permanent status, give an indefinite tenure, or extend rights created and arising under the contract beyond its life, when it has been terminated in accordance with its provisions. *Elder v. New York*

Central R. Co., 152 F.2d 361 (6th Cir. 1945); *System Federation No. 59 of Railway Employees Department of A. F. of L. v. Louisiana and A. R. Co.*, 119 F.2d 509 (5th Cir. 1941); *Flight Engineers' International Ass'n, EAL Chapter, AFL-CIO v. Eastern Airlines, Inc.*, 359 F.2d 303 (2d Cir. 1966).

In *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 22 L.Ed.2d 344 (1969), the Supreme Court noted:

> "Nowhere does the text of the Railway Labor Act specify what is to take place once these procedures have been exhausted without yielding resolution of the dispute." 394 U.S. at 378.

The Court went on to say:

> "The Court has in the past referred to the NLRA for assistance in construing the Railway Labor Act, see, *e.g., Steele v. Louisville and N. R. Co.*, 323 U.S. 1972, 200-201 (1944); *Railroad Trainmen v. Toledo P. and W. R. Co.*, 321 U.S. 50, 61, n. 18 (1944), and we do so again here." 394 U.S. at 383.

Thus the court has placed its sanction upon a properly limited reference to the N.L.R.A. when attempting to interpret the Railway Labor Act. Cases decided under the N.L.R.A. hold that an extension of the expired contract cannot be implied from the acts of the parties. *Procter and Gamble Independent Union of Port Ivory, N.Y. v. Procter and Gamble Mfg. Co.*, 312 F.2d 181 (2d Cir. 1962), cert. denied 374 U.S. 830 (1963); *Baker v. Fleet Maintenance, Inc.*, 409 F.2d 551 (7th Cir. 1969); *East Bay Union of Ma-*

chinists, Local 1304, United Steelworkers of America, AFL-CIO v. Fibreboard Paper Products Corp., 285 F.Supp. 282 (N.D. Cal. 1968), aff'd 435 F.2d 556 (9th Cir. 1970); *N.L.R.B. v. Cone Mills Corp.*, 373 F.2d 595 (4th Cir. 1967). In the latter case, it was held that union shop and check-off provisions do not survive the termination of the contract, and the employer may unilaterally discontinue them after the contract comes to an end without affording the union an opportunity to bargain.

As noted in *Eastern Airlines, Manning v. American Airlines*, 329 F.2d 32 (2d Cir. 1964), cert. denied 379 U.S. 817 (1964), is distinguishable on the grounds that the statutory conciliation procedures in *Manning* had not been exhausted before American attempted a unilateral change. The opinion reads in part:

> "... the very purpose of §6 (of the Act) is to stabilize relations by artificially extending the lives of agreements *for a limited period* regardless of the parties' intentions." (emphasis supplied)

Thus the *Manning* court recognized that the Act does not operate to extend the terms of the collective bargaining agreements forever, but only for the "limited period" specified in the Act.

In *Brotherhood of Railroad Trainmen v. Alcron & Barberton Belt R. Co.*, 385 F.2d 581 (C.A.D.C. 1967), cert. denied 390 U.S. 923 (1968), after the exhaustion of the statutory procedures Congress passed a law which expressly forbade any unilateral self-help by

the parties. Public Law 88-108, 77 Stat. 132 (1963). A Board of Arbitration was set up and directed to render an award binding upon all parties. The award was to continue in force for not over two years. The Unions claimed that there should be a return to the status quo as it existed prior to the special act of Congress; the carriers asserted that the awards transcended the two-year period and declined to bargain in good faith as to certain proposals covered in the award.

The Court ruled that the award had created a new "plateau" or status quo, and that both parties were required to abide by the terms of the Railway Labor Act prior to the expiration of the award before resorting to self-help. But once matters reached a point where self-help measures are imposed by either party, then the Railway Labor Act no longer applies, its usefulness having come to an end.

The trouble with the Union's position is that it assumes that each term is a sort of mini-contract which can be separated from the whole agreement. Collective bargaining agreements result from patient negotiations and a certain amount of give-and-take. A Company agrees to fund a pension plan on the understanding that a Union will cut its demand for higher wages by half. The contract is not a series of severable clauses but an integrated whole. Once some of its terms are no longer in effect, the entire contractual scheme falls, and the disjointed remainder cannot fairly be said to represent a "status quo", even if one is required.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted this 18th day of April, 1973.

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